IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

Crl.L.P..No. 717 of 2007()

CC.255/2004 of JUDICIAL FIRST CLASS MAGISTRATE COURT,,AMBALAPUZHA

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APPELLANT/COMPLAINANT

THOMAS GEORGE, S/O.VARKEY THOMAS,
MULAPPANCHERIL HOUSE, PANDANKARY,
EDATHUA.

BY ADV. SRI.M.V.MATHEW

RESPONDENTS: ACCUSED & STATE

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1. M.S.THOMAS, MADAPPILLIL
ATHIRAMPUZHA MURI EATTUMANOOR,
KOTTAYAM.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA AT ERNAKULAM.

BY ADV. SRI.S.ANIL KUMAR (CHERTHALA)-R1
PUBLIC PROSECUTOR SRI. PUZHAKKARA MOHAMMED - R2

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 03/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. L.P. NO. 717 OF 2007

Dated this the 3rd day of October, 2007

O R D E R

This petition for special leave to appeal is filed against the judgment in C.C. No.255 of 2004 on the file of the Judicial First Class Magistrate's Court, Ambalapuzha.

2. The case of the petitioner - complainant was that the accused - first respondent herein issued three cheques, two for Rs.30,000/- each and one for Rs.25,000/- in favour of the complainant in discharge of a liability of Rs.85,000/- and that the said cheques when presented to the bank for encashment were dishonoured on the ground that payments were stopped by the drawer. The complainant issued a lawyer's notice to the accused on 13.1.2004 and inspite of the notice when the amounts covered by the cheques were not paid, the complaint was filed. To prove the case against the accused, the complainant himself was examined as PW.1 and Exts.P1 to P6 were produced. On the side of the defence, the accused was examined as DW.1 and five other witnesses were examined as DWs.2

to 6 and Exts.D1 to D6 were produced. On closing the evidence of the complainant, the accused was questioned under Section 313 Cr.P.C. He denied the allegations levelled against him and stated that the cheques in question were not issued by him , but those were forcibly taken from his office by the complainant and his men. After considering the entire evidence, the trial court found the accused not guilty and acquitted him of the charges levelled against him.

3. The trial court had considered the entire evidence adduced by both sides. The specific case set up by the petitioner - complainant was that the cheques in question were issued by the accused towards discharge of a liability of Rs.85,000/-. As per the evidence adduced by DWs.1 to 6, the trial court found that the cheques were forcibly taken by the complainant and his men from the office of the accused and that a complaint was also filed by the accused before the police of which Ext.D1 was the F.I.R. The trial court relied on the evidence of DW.5, the Sub Inspector of Police, Etttumannoor Police Station who had stated that on the basis of the complaint filed by the accused, a case was registered by his predecessor and that he filed charge sheet alleging commission of offences punishable under Sections 452, 341, 506(i), 294(b), 386 read with Section 34 I.P.C. The trial court also relied on Exts.D3 and D4 search lists, Ext.D5

scene mahazar and Ext.D6 charge sheet and found that the case set up by the accused was correct and that the petitioner - complainant failed to prove that the cheques in question were issued by the accused as alleged in the complaint. After considering the entire evidence and the findings entered by the trial court, this Court is of the view that the impugned judgment requires no interference.

The Crl. Leave Petition is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

sp/

K. THANKAPPAN, J.

CRL.A. NO.

JUDGMENT

OCTOBER, 2007